

Assembly Bill No. 1149

Passed the Assembly September 8, 2011

Chief Clerk of the Assembly

Passed the Senate September 7, 2011

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 14549.2 and 14581 of the Public Resources Code, relating to beverage containers, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1149, Gordon. Beverage containers: recycling and litter reduction: funds.

Existing law, the California Beverage Container Recycling and Litter Reduction Act, requires a distributor to pay a redemption payment for every beverage container sold or offered for sale in the state to the Department of Resources Recycling and Recovery for deposit in the California Beverage Container Recycling Fund. After setting aside funds for the payment of refund values and administrative fees, and for a reserve for contingencies, the remaining moneys in the fund are continuously appropriated to the department for expenditure for designated programs, grants, and fee payments, including annually expending up to \$10,000,000 to make market development payments for empty plastic beverage containers, until January 1, 2012. The department is authorized to expend up to \$20,000,000 annually, until January 1, 2012, for recycling market development grants and up to \$20,000,000 annually, until January 1, 2012, for certain grants and programs, but is prohibited from expending those funds for the 2010 and 2011 calendar years. The department is also required to publish an evaluation of those grants by January 1, 2014. Existing law requires the department to determine the amount of the market development payment, but not more than a specified amount per ton. The department is required to establish a processing fee account for each material type and to deposit in the account, besides the processing fees paid for that material type, a specified amount of the remaining moneys in the fund.

The bill would require the department, in setting the amount of the market development payments for both certified entities and product manufacturers, to consider certain factors and would extend the authorization to annually expend up to \$10,000,000 to make

these payments until January 1, 2017, thereby making an appropriation.

The bill would authorize the department to expend from the remaining moneys in the fund, until January 1, 2017, an amount for market development payments for empty plastic beverage containers, in addition to the existing authorization. The bill would require the department to calculate this additional amount, in a specified manner, based upon the amount of the remaining moneys in the fund estimated to be necessary for deposit in the processing fee account for plastic beverage containers.

The bill would delete the authorization to expend funds for recycling market development grants and for those other grants and programs and would repeal the requirement for the publication of the grant evaluation.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 14549.2 of the Public Resources Code is amended to read:

14549.2. (a) For purposes of this section, the following definitions shall apply:

(1) “Certified entity” means a recycling center, processor, or dropoff or collection program certified pursuant to this division.

(2) “Product manufacturer” means any person who manufactures a plastic product in this state.

(b) In order to develop California markets for empty plastic beverage containers collected for recycling in the state, the department may, consistent with Section 14581 and subject to the availability of funds, pay a market development payment to a certified entity or product manufacturer for empty plastic beverage containers collected and managed pursuant to this section.

(c) The department shall make a market development payment to a certified entity or product manufacturer in accordance with this section, only if the plastic beverage container is collected and either recycled or used in manufacturing, in the state, as follows:

(1) The department shall make a market development payment to a certified entity for empty plastic beverage containers that are collected for recycling in the state, that are subsequently washed and processed by a certified entity into a flake, pellet, or other

form in the state, and made usable for the manufacture of a plastic product by a product manufacturer.

(2) The department shall make a market development payment to a product manufacturer for empty plastic beverage containers that are collected for recycling in the state, that are subsequently washed and processed into a flake, pellet or other form in the state, and used by that product manufacturer to manufacture a product in this state.

(3) The department shall determine the amount of the market development payment, which may be set at a different level for a certified entity and a product manufacturer, but shall not exceed one hundred fifty dollars (\$150) per ton. In setting the amount of the market development payment for both certified entities and product manufacturers, the department shall consider all of the following:

(A) The minimum funding level needed to encourage the in-state washing and processing of empty plastic beverage containers collected for recycling in this state.

(B) The minimum funding level needed to encourage the in-state manufacturing that utilizes empty plastic beverage containers collected for recycling in this state.

(C) The total amount of funds projected to be available for plastic market development payments and the desire to maintain the minimum funding level needed throughout the year.

(4) The department may make a market development payment to both a certified entity and a product manufacturer for the same empty plastic beverage container.

(d) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 2. Section 14581 of the Public Resources Code is amended to read:

14581. (a) Subject to the availability of funds and in accordance with subdivision (c), the department shall expend the moneys set aside in the fund, pursuant to subdivision (c) of Section 14580, for the purposes of this section in the following manner:

(1) For each fiscal year, the department may expend the amount necessary to make the required handling fee payment pursuant to Section 14585.

(2) Fifteen million dollars (\$15,000,000) shall be expended annually for payments for curbside programs and neighborhood dropoff programs pursuant to Section 14549.6.

(3) (A) Fifteen million dollars (\$15,000,000), plus the proportional share of the cost-of-living adjustment, as provided in subdivision (b), shall be expended annually in the form of grants for beverage container litter reduction programs and recycling programs issued to either of the following:

(i) Certified community conservation corps that were in existence on September 30, 1999, or that are formed subsequent to that date, that are designated by a city or a city and county to perform litter abatement, recycling, and related activities, if the city or the city and county has a population, as determined by the most recent census, of more than 250,000 persons.

(ii) Community conservation corps that are designated by a county to perform litter abatement, recycling, and related activities, and are certified by the California Conservation Corps as having operated for a minimum of two years and as meeting all other criteria of Section 14507.5.

(B) The grants provided pursuant to this paragraph shall not comprise more than 75 percent of the annual budget of a community conservation corps.

(C) For the 2009–10 fiscal year only, the eight million two hundred fifty thousand dollars (\$8,250,000) appropriated to the California Conservation Corps for certified local conservation corps by Item 3340-101-0133 of Sec. 2.00 of the 2009–10 Budget Act, as added by Section 166 of Chapter 1 of the Fourth Extraordinary Session of the Statutes of 2009, shall be in addition to the amounts expended pursuant to this paragraph.

(4) (A) Ten million five hundred thousand dollars (\$10,500,000) may be expended annually for payments of five thousand dollars (\$5,000) to cities and ten thousand dollars (\$10,000) for payments to counties for beverage container recycling and litter cleanup activities, or the department may calculate the payments to counties and cities on a per capita basis, and may pay whichever amount is greater, for those activities.

(B) Eligible activities for the use of these funds may include, but are not necessarily limited to, support for new or existing curbside recycling programs, neighborhood dropoff recycling programs, public education promoting beverage container

recycling, litter prevention, and cleanup, cooperative regional efforts among two or more cities or counties, or both, or other beverage container recycling programs.

(C) These funds shall not be used for activities unrelated to beverage container recycling or litter reduction.

(D) To receive these funds, a city, county, or city and county shall fill out and return a funding request form to the department. The form shall specify the beverage container recycling or litter reduction activities for which the funds will be used.

(E) The department shall annually prepare and distribute a funding request form to each city, county, or city and county. The form shall specify the amount of beverage container recycling and litter cleanup funds for which the jurisdiction is eligible. The form shall not exceed one double-sided page in length, and may be submitted electronically. If a city, county, or city and county does not return the funding request form within 90 days of receipt of the form from the department, the city, county, or city and county is not eligible to receive the funds for that funding cycle.

(F) For the purposes of this paragraph, per capita population shall be based on the population of the incorporated area of a city or city and county and the unincorporated area of a county. The department may withhold payment to any city, county, or city and county that has prohibited the siting of a supermarket site, caused a supermarket site to close its business, or adopted a land use policy that restricts or prohibits the siting of a supermarket site within its jurisdiction.

(5) (A) One million five hundred thousand dollars (\$1,500,000) may be expended annually in the form of grants for beverage container recycling and litter reduction programs.

(B) Notwithstanding subdivision (f), the department shall not expend funds pursuant to this paragraph for the 2010 and 2011 calendar years.

(6) (A) The department shall expend the amount necessary to pay the processing payment established pursuant to Section 14575. The department shall establish separate processing fee accounts in the fund for each beverage container material type for which a processing payment and processing fee are calculated pursuant to Section 14575, or for which a processing payment is calculated pursuant to Section 14575 and a voluntary artificial scrap value is

calculated pursuant to Section 14575.1, into which account shall be deposited both of the following:

(i) All amounts paid as processing fees for each beverage container material type pursuant to Section 14575.

(ii) Funds equal to the difference between the amount in clause (i) and the amount of the processing payments established in subdivision (b) of Section 14575, and adjusted pursuant to paragraph (2) of subdivision (c) of, and subdivision (f) of, Section 14575, to reduce the processing fee to the level provided in subdivision (e) of Section 14575, or to reflect the agreement by a willing purchaser to pay a voluntary artificial scrap value pursuant to Section 14575.1.

(B) Notwithstanding Section 13340 of the Government Code, the moneys in each processing fee account are hereby continuously appropriated to the department for expenditure without regard to fiscal years, for purposes of making processing payments pursuant to Section 14575.

(C) Notwithstanding the other provisions of this section and Section 14575, for the 2010 and 2011 calendar years, the total amount that the department may expend to reduce the amount of processing fees for each container type shall not exceed the total amount expended to reduce processing fees in the 2008 calendar year.

(7) (A) Up to five million dollars (\$5,000,000) may be annually expended by the department for the purposes of undertaking a statewide public education and information campaign aimed at promoting increased recycling of beverage containers.

(B) Notwithstanding subdivision (f), the department shall not expend funds pursuant to this paragraph for the 2010 and 2011 calendar years.

(8) Up to ten million dollars (\$10,000,000) may be expended annually by the department for quality incentive payments for empty glass beverage containers pursuant to Section 14549.1.

(9) (A) Up to ten million dollars (\$10,000,000) may be expended annually by the department for market development payments for empty plastic beverage containers pursuant to Section 14549.2, until January 1, 2017.

(B) On and after January 1, 2012, in addition to the amount specified in subparagraph (A), the department may expend the amount calculated pursuant to subparagraph (C) for market

development payments for empty plastic beverage containers pursuant to Section 14549.2.

(C) The department shall calculate the amount authorized for expenditure pursuant to subparagraph (B) in the following manner:

(i) The department shall determine, on or before January 1, 2012, and annually thereafter, whether the amount of funds estimated to be necessary pursuant to clause (ii) of subparagraph (A) of paragraph (6) for deposit to a processing fee account established by the department for plastic beverage containers to make processing payments for plastic beverage containers for the current calendar year is less than the total amount of funds that were estimated to be necessary the previous calendar year pursuant to clause (ii) of subparagraph (A) of paragraph (6) for deposit to that processing fee account.

(ii) If the amount estimated to be necessary for the current calendar year, as specified in clause (i), is less than the amount estimated to be necessary for the previous calendar year, the department shall calculate the amount of that difference.

(iii) The department shall expend an amount that is not greater than 50 percent of the amount calculated pursuant to clause (ii) for purposes of subparagraph (B).

(iv) If the department determines that the amount of funds authorized for expenditure pursuant to this subparagraph is not needed to make plastic market development payments pursuant to subparagraph (B) in the calendar year for which that amount is allocated, the department may expend those funds during the following year.

(v) If the department determines that there are insufficient funds to both make the market development payments pursuant to subparagraph (B) and to deposit the amount required by clause (ii) of subparagraph (A) of paragraph (6), for purposes of making the processing payments and reducing the processing fees pursuant to Section 14575 for plastic beverage containers, the department shall suspend the implementation of this subparagraph and subparagraph (B).

(D) Subparagraphs (B) and (C) shall remain operative only until January 1, 2017.

(b) The fifteen million dollars (\$15,000,000) that is set aside pursuant to paragraph (3) of subdivision (a) is a base amount that the department shall adjust annually to reflect any increases or

decreases in the cost of living, as measured by the Department of Labor, or a successor agency, of the federal government.

(c) (1) If the department determines, pursuant to a review made pursuant to Section 14556, that there may be inadequate funds to pay the payments required by this division, the department shall immediately notify the appropriate policy and fiscal committees of the Legislature regarding the inadequacy.

(2) On or before 180 days, but not less than 80 days, after the notice is sent pursuant to paragraph (1), the department may reduce or eliminate expenditures, or both, from the funds as necessary, according to the procedure set forth in subdivision (d).

(d) If the department determines that there are insufficient funds to make the payments specified pursuant to this section and Section 14575, the department shall reduce all payments proportionally.

(e) Prior to making an expenditure pursuant to paragraph (7) of subdivision (a), the department shall convene an advisory committee consisting of representatives of the beverage industry, beverage container manufacturers, environmental organizations, the recycling industry, nonprofit organizations, and retailers to advise the department on the most cost-effective and efficient method of the expenditure of the funds for that education and information campaign.

(f) Subject to the availability of funds, the department shall retroactively pay in full any payments provided in this section that have been proportionally reduced during the period of January 1, 2010, through June 30, 2010.

Approved _____, 2011

Governor